IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2427 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO LTD.

Versus

RATNAKAR MANIKNARAYAN KASHYAP

Appearance:

1. First Appeal No. 2427 of 2003
MR RAJNI H MEHTA for Petitioner No. 1
MR AV PRAJAPATI for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 20/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

1. By invocation of the provisions of Section 173 of the Motor Vehicles Act, 1988, the appellant - original opponent no.3 in the claim petition, the Oriental Insurance Company Ltd. (Insurer), has challenged the judgment and award of M.A.C.T. (Auxilliary) Ahmedabad, dated 24/07/03, whereby, the respondent no.1 came to be awarded a consolidated sum of Rs.3,12,800/- by way of compensation with proportionate cost and interest @ 9% per annum from the date of claim petition, against the Insurer, appellant, respondent no.2 (the driver of the offending jeep), respondent no.3 (the owner of the offending jeep), mainly on the ground that the Tribunal has failed to appreciate the contribution of the original claimant in the happening of the unfortunate road mishap and that the assessment of compensation is on a very high side, whereas, both these grounds are controverted by the learned advocate appearing for the original claimant, the breakup of which is as follows;

Head	Amount (Rs.)
Future loss of income :	2,10,600.00
Actual loss of income :	45,000.00
Damages to the scooter :	4,000.00
Attendance charges :	3,200.00
Pain, shock and suffering :	25,000.00
Medical expenses :	20,000.00
Transportation and special diet :	5,000.00
Total :	3,12,800.00

2. We have heard extensively the learned advocates appearing for the parties, upon whose request the matter is taken up today for final hearing. Originally, the claimant petition came to be filed by the original claimant for compensation of an amount of Rs.5,00,000/(five lakhs) for personal injuries sustained by him in an unfortunate road accident which occurred, on 01/10/2000, when the original claimant was proceeding on a scoter bearing registration No.GJ-1-BA-6302, on Airport

- Shahibaug road. The original claimant was incharge of the scooter, whereas, the respondent no.2 - the driver who was driving the jeep bearing registration No.RJ-27-C-9634, was, also, proceeding in the same direction. The claimant alleged that the driver of the jeep upon reaching near military gate on the Shahibaug road, all of a sudden took a "U" turn and dashed against the scooter of the original claimant, as a result of which the claimant sustained serious injuries and the scooter sustained serious damages.

3. The original opponents no.1 and 2, the driver and the owner of the offending jeep, despite service did not appear and contest the claim. Appellant herein, original opponent no.3, Insurer, appeared and contested the claim by filing written statement, inter alia contending that the entire responsibility for the happening of the unfortunate road accident in question, was on the part of the original claimant.

4. The claimant came to be examined, at Ex.27. None was examined on behalf of the original opponents. The claimant, also, placed reliance on the medical evidence and also, on the evidence of Dr.M.R.Shah. The documentary evidence in the nature of F.I.R., at Ex.21, panchnama of the scene of offence, at Ex.22, chargesheet against the opponent no.1 at Ex.23, injury certificate issued by the Civil Hospital, Ahmedabad, at Ex.24 and other miscellaneous relevant documents showing the medical expenses, came to be relied on by the claimant. From the medical evidence it is noticed that the claimant had sustained serious injuries. He was hospitalized and was undergoing medical treatment. He had sustained permanent partial disablement to the extent of 15.6% of the body as a whole. The Tribunal, upon consideration of the evidence and appreciation of the rival submissions, passed the award for an amount of Rs.3,12,800/- under all the heads as stated hereinabove, along with interest @ 9% per annum from the date of making of application, till the payment, along with proportionate cost therein, by virtue of the impugned judgment and award.

5. We have given our anxious thoughts and consideration to the evidence, copies of which came to be supplied during the course of hearing before us today. In our opinion, upon assessment of the factual profile, entire evidence and the nature and number of injuries, as well as, the extent of disablement sustained by the original claimant and the role and the contribution of the original claimant in the happening of the unfortunate road mishap, the assessment of the amount of compensation

at Rs.3,12,800/- appears to be excessive and on the higher side.

6. After taking into consideration the manner and mode in which the accident occurred as per the evidence, the topographical situation emerging from the panchnama, in our opinion, the Tribunal has failed to appreciate the contribution of the original claimant in the happening of the unfortunate road accident. The Tribunal has laid blameworthiness on the part of the driver of the offending jeep. This aspect is quiet erroneous, in light of the facts on record and the F.I.R. and the panchnama produced before the Tribunal, even while taking conservative view in the matter. It can safely be concluded that the role and the contribution of the original claimant, who was incharge of the scooter, has undoubtedly contributed not less than 15% in the happening of the unfortunate road mishap in question. Obviously, therefore, the amount of 15%, the blameworthiness of which is on the shoulder of the original claimant, shall have to be sliced down from the amount awarded by the Tribunal. It is, therefore, jointly submitted that after deducting the 15% of the amount being the contribution of the original claimant in the happening of the accident, the claimant would be entitled to an amount of Rs.2,66,800/- (Two lakhs sixty six thousand eight hundred only) and rounded up to Rs.2,70,000/- with same rate of interest and proportionate cost.

7. Since this aspect of contributory negligence on the part of the original claimant is not seriously appreciated by the Tribunal, even without going into other aspects of the amount of compensation under the different heads awarded by the Tribunal, we are left with no alternative, but to interfere in exercise of our appellate powers u/s.173 of the Municipalities Act, 1988. Obviously, therefore, the original claimant, respondent no.1 in this appeal, shall be entitled to only an amount of Rs.2,70,000/- (Two lakh seventy thousand only) with interest @ 9% per annum from the date of application, till payment with proportionate cost. The direction of the Tribunal for disbursement are allowed to remain intact, and it will be, therefore, open to the Tribunal to pass appropriate order for disbursement in the same terms and conditions incorporated in the impugned judgment and award of the Tribunal.

8. The appeals shall stand, therefore, partly allowed. The impugned judgment and award shall stand partly modified. Award shall be drawn accordingly. The

office is directed to sent back the records and proceedings expeditiously. As a necessary corollary, if the full amount is deposited as directed by this Court at the time of interlocutory order and the civil application for stay, obviously, in view of our aforesaid observations and directions, the difference of amount shall have to be refunded to the appellant - original respondent no.3 (Insurer).

9. Obviously no order would be necessary on the said civil application which shall not survive.

(J. N. Bhatt, J.)

(K. A. Puj, J.)

pravin/